

REMARKS/ARGUMENTS

Claims 1, 3-11 and 13-31 are pending in the application, with claim 12 being cancelled and claims 15-29 and 31 being withdrawn pursuant to a restriction requirement. Applicant respectfully reserves the right to prosecute the non-elected claims in a divisional or continuation application.

Reconsideration is requested in view of the above amendments and the following remarks.

Applicant's undersigned representative wishes to thank the Examiner for his thorough examination of the application and claims and his assistance in helping to place the claims in condition for allowance now that no substantive rejections over art remain.

Applicant has reviewed the advisory office action of April 8, 2010 and the claim language and believes that the amendments resolve all outstanding issues. However, if any issues remain, the Examiner is invited to telephone Applicant's undersigned representative to discuss and resolve them.

The advisory action required the deletion of the term "general" in the claims. Applicant has amended the claims to remove this reference.

The advisory action also indicated that, in claim 8, the term "aryl" should be changed to --phenyl--, and in claim 9, "or tolyl" should be deleted. Applicant has amended claims 8 and 9 accordingly.

SECTION 112, FIRST PARAGRAPH (RAISED IN THE ADVISORY ACTION)

The advisory action also indicated that "NH₂, amino substituted with lower alkyl" as substituents in claim 1, were rejected under 35 U.S.C. §112, first paragraph.

Applicant respectfully traverses the rejection. The specification is enabling and fully supports the Applicant's claimed subject matter.

The Preparation Examples in the present specification (see pp. 41-43) fully support the recitation and inclusion of the alkyl amino recited in claim 1. For example Preparation Example 1 sets forth the following: reaction of 8,8'-bis-(dimethylamino)-3,3'-dimethyl-10,10'-diphenyl-[2,2']biphenazinyl-10,10'-ium tetrafluoroborate, 3,8'8"-tris-(N,N-dimethylamino)-8-methyl-5, 10', 10"-triphenyl-[2,2';7',2"]terphenazine-5,10',10"-ium tetrafluoroborate, 3'-N,N-dimethylamino-3,8'-dimethyl-8-(N-methylamino)-7-oxo-10,5'diphenyl-5',7'-dihydro-[2,2']biphenazinyl-10-ium chloride and 3,8'-bis-(N,N-dimethylamino)-8,3'-dimethyl-5,10'-diphenyl-7-hydroxy-[2,2']biphenazinyl-5,10'-ium tetrafluoroborate, wherein the portions being underlined indicate the residue having amino functionalities. The R groups recited in claim 1, namely R^{1'4', 6'9'}, R^{1"4", 6"9"} being alkyl amino are clearly supported by the Applicant's specification. The examples, which are representative of the invention, support claim 1 and the language "NH₂, amino substituted with lower alkyl". One of ordinary skill in the art would understand the Applicant's examples to illustrate and disclose amino residues, which are methylated amino that are not affected during the diazotization reaction to yield diazonium groups, but are still present in the oligomeric compounds. Therefore, claim 1 is supported by the specification.

As the Federal Circuit Court of Appeals has held, a patent claim may be broader than the specific examples disclosed and still fulfill the description requirement of section 112. See *Martek Biosciences Corp. v. Nutrinova, Inc.*, 579 F.3d 1363, 1371 (Fed. Cir. 2009) citing *Bilstad v. Wakalopulos*, 386 F.3d 1116, 1123 (Fed. Cir. 2004)(“We cannot

agree with the broad proposition...that in every case where the description of the invention in the specification is narrower than that in the claim there has been a failure to fulfill the description requirement in section 112.'" (quoting *In re Smythe*, 480 F.2d 1376, 1382 (CCPA 1973)); *In re Rasmussen*, 650 F.2d 1212, 1215 (CCPA 1981) (explaining that, in the context of written description, the fact "that a claim may be broader than the specific embodiment disclosed in a specification is in itself of no moment"); *see also Tex. Instruments, Inc. v. Int'l Trade Comm'n*, 805 F.2d 1558, 1563 (Fed. Cir. 1986) ("This court has cautioned against limiting the claimed invention to preferred embodiments or specific examples in the specification.").

Accordingly, here, the examples and compounds recited in the specification support the claimed subject matter and the rejection should be withdrawn.

THE CLAIM OBJECTIONS (Claim 14)

Claim 14 has been objected to because of an informality. Applicant has amended claim 14 to remove the hyphen, as suggested by the Examiner. This amendment has been made to claim 14 by the use of double square brackets around the hyphen preceding the acid anion (e.g., chloride, sulfate, hydrogen sulfate, tetrafluoroborate).

35 U.S.C. SECTION 112, FIRST PARAGRAPH

Claims 1, 3-10, 12, 13 and 30 stand rejected under 35 USC 112, first paragraph. This rejection is respectfully traversed.

Applicant has amended claim 1 to overcome the section 112 rejection. In view of the above amendments, reconsideration and a withdrawal of the rejection is respectfully requested.

35 U.S.C. SECTION 112, SECOND PARAGRAPH

Claims 1, 3-10, 12, 13 and 30 stand rejected under 35 USC 112, second paragraph. This rejection is respectfully traversed.

The term amino, in claim 1, was found by the Examiner to be a relative term which renders the claims indefinite. According to the Examiner's suggestions the term amino has been removed and replaced with "NH₂, amino substituted with lower alkyl". This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection are hereby requested.

THE CLAIM OBJECTIONS (Claim 11)

Claim 11 was objected to as being dependent on a claim 1 which has been rejected. Claim 1 has been amended according to the Examiner's suggestions. Accordingly, the objection is believed to be obviated.

THE SECTION 112 REJECTION OF THE CLAIMS (second paragraph)

First, for the reasons set forth above in connection with the amendments to claim 1 with regard to the section 112, first paragraph rejection, the section 112 rejection, second paragraph, is believed to be overcome.

In addition, claim 12 stands rejected under 35 USC 112, second paragraph, as being indefinite. Applicant has cancelled claim 12, as suggested by the Examiner. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection are hereby requested.

Claim 30 has been rejected due to its dependency on claim 2, now cancelled. Accordingly, this rejection has been addressed by making claim 30 depend from claim 1, for which there is antecedent basis.

CONCLUSION

Accordingly, for the above reasons, reconsideration and a withdrawal of all outstanding objections and rejections are hereby respectfully requested.

Early action on the case and allowance of the pending claims is hereby earnestly solicited.

In the event that an extension of time, or further extension of time, is necessary, in order for this response to be timely filed, Applicant hereby respectfully requests the necessary extension.

The Commissioner is authorized to charge any additional fees, including extension fees, which may be required to Patent Office Deposit Account No. 05-0208.

Respectfully submitted,
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